

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
and)	
)	
THE STATE OF INDIANA, STATE OF OHIO, and THE NORTHWEST AIR POLLUTION AUTHORITY, WASHINGTON,)	Civil No. 2:96 CV 095
)	
Plaintiff-Intervenors,)	
)	
v.)	
)	
BP EXPLORATION & OIL CO., et al.,)	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF THE
UNITED STATES OF AMERICA’S CONSENT MOTION TO ENTER
THE ELEVENTH AND TWELFTH AMENDMENTS TO THE CONSENT DECREE**

BP Products North America Inc. (“BP”), a successor to the original Defendants, has now satisfied the requirements for terminating the Consent Decree’s obligations for its petroleum refineries in Blaine, Washington (the “Cherry Point Refinery”) and Oregon, Ohio, (the “Toledo Refinery”).¹ The Eleventh Amendment to the Consent Decree (“Eleventh Amendment”) terminates all remaining requirements of the 2001 Consent Decree and its amendments that

¹ We refer to the original Consent Decree as the “2001 Consent Decree.” *See* Doc. No. 130 (Aug. 29, 2001). The 2001 Consent Decree resolved allegations that the Defendants violated the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, at eight of their U.S. petroleum refineries. The settlement required the Defendants to pay a civil penalty and perform significant injunctive relief at the refineries, some of which have now been sold by the Defendants. *See id.*

apply to BP's Cherry Point Refinery. *See* Eleventh Amendment at 2-4 (ECF Doc. No. 197-1). The Twelfth Amendment to the Consent Decree ("Twelfth Amendment") conditionally terminates all remaining requirements of the 2001 Consent Decree and its amendments that apply to BP's Toledo Refinery. *See* Twelfth Amendment at 2-4 (ECF Doc. No. 197-2). Each refinery's termination is handled in a separate amendment because they present different circumstances, which are explained below and in the amendments.

After the Eleventh Amendment and Twelfth Amendment are entered by the Court, BP will no longer be a party to the 2001 Consent Decree, and only two refineries will remain subject to it: the Texas City, Texas Refinery ("Texas City Refinery") and Carson, California Refinery ("Carson Refinery").²

BACKGROUND

A. The 2001 Consent Decree's termination requirements

The 2001 Consent Decree may be terminated for individual refineries once certain requirements have been completed. *See* 2001 Consent Decree ¶ 86.G. These requirements, in general, are that BP has paid the civil penalty and completed all of the 2001 Consent Decree's compliance requirements, including the injunctive relief. *See id.*

B. The Eleventh Amendment

BP has satisfied the 2001 Consent Decree's requirements for terminating the Cherry Point Refinery.³ BP certified to the United States that the Cherry Point Refinery has satisfied

² The Texas City Refinery is owned and operated by Blanchard Refining Company LLC ("Blanchard"), a wholly owned subsidiary of Marathon Petroleum Company L.P. ("Marathon"). The Carson Refinery is owned and operated by Marathon.

³ The Eleventh Amendment only affects the interests of the United States, Northwest Clean Air Agency (the successor agency to the Northwest Air Pollution Authority, a Plaintiff-Intervenor), and BP. *See* Eleventh Amendment at 3.

the requirements for termination. *See* Eleventh Amendment at 3. The EPA and the Northwest Clean Air Agency reviewed BP's certification and concur that BP has satisfied the requirements for terminating the Cherry Point Refinery from the 2001 Consent Decree. *See id.*

Accordingly, the United States now seeks to terminate the Cherry Point Refinery from the 2001 Consent Decree.

C. The Twelfth Amendment

The Twelfth Amendment accomplishes two things.⁴ First, it conditionally terminates the Toledo Refinery's obligations under the 2001 Consent Decree. *See* Twelfth Amendment at ¶ 1. Second, the Twelfth Amendment memorializes the amount of heater and boiler capacity that still must be controlled at the two refineries that remain subject to the 2001 Consent Decree.⁵ *See id.* ¶ 1(b) and (c) (pages 5-6).

BP has satisfied the requirements for terminating most the Toledo Refinery's obligations under the 2001 Consent Decree. *See* Twelfth Amendment at 2-3. However, some have not yet been completed. *See id.* The Twelfth Amendment transfers these remaining obligations so that they may incorporated into a new, separate Consent Decree that only applies to the Toledo Refinery. *See id.* This new Consent Decree was lodged today (simultaneously with the Twelfth Amendment's filing in this Court) in a related case in the Northern District of Ohio, where the Toledo Refinery is located. *See United States et al. v. BP Products North America*

⁴ The Twelfth Amendment does not affect the interest of any of the parties to the 2001 Consent Decree other than the United States, the State of Ohio, and BP. *See* Twelfth Amendment at 4.

⁵ The 2001 Consent Decree requires that 59.5% of the total heat input capacity (measured in mmBTU/hr) of all of the covered refineries' heaters and boilers must be controlled to limit nitrogen oxide (NOx) emissions. *See* 2001 Consent Decree, ¶ 15.C (page 26). In general, BP was permitted to choose which heaters and boilers it controlled in order to meet this overall percentage. *See id.* The Twelfth Amendment memorializes the chosen allocation of firing capacity at the remaining two refineries. *See* Twelfth Amendment ¶ 1(b) and (c) (pages 5-6).

Inc. et al. (3:20-cv-190). Considering the extent of the 2001 Consent Decree's requirements that BP has completed, and that BP is agreeing to incorporate any remaining obligations into the new Consent Decree, the Toledo Refinery should be terminated from the 2001 Consent Decree.

The Twelfth Amendment specifies when the obligations of the 2001 Consent Decree end, and when the obligations of the new Consent Decree commence. *See* Twelfth Amendment ¶ 1. The Toledo Refinery's obligations under the 2001 Consent Decree terminate as soon as: 1) the new Consent Decree is entered by the Court in the Northern District of Ohio, and 2) BP pays the stipulated penalties owed under Section V of the new Consent Decree. *See id.*

Consolidating the Toledo Refinery's Clean Air Act obligations under one "roof" will also promote efficiency and ensure consistent oversight of the refinery's compliance. In addition to incorporating the Toledo Refinery's remaining obligations under the 2001 Consent Decree, the new Consent Decree also resolves newly alleged violations of the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Comprehensive Emergency Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, and the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001 *et seq.* These violations occurred at the Toledo Refinery after the 2001 Consent Decree was entered. *See* Twelfth Amendment at 3. Additional injunctive requirements and civil penalties are required to address these newly alleged violations. *See* Consent Decree §§ V and VI, ECF Doc. 2-1, *United States et al. v. BP Products North America Inc. et al.*, 3:20-cv-190 (N.D. Ohio).

ARGUMENT

This Court need not determine whether the new Consent Decree is "fair, reasonable, adequate, and consistent with the applicable statutes" in order to approve the Twelfth Amendment. *See United States, et al. v. BP Exploration & Oil Co., et al.*, 167 F.Supp.2d 1045, 1055 (N.D. Ind. 2001) (reviewing and approving the 2001 Consent Decree). The standard of

review for terminating a consent decree is different than deciding whether to approve it as an initial matter. Termination is warranted when upon the 2001 Consent Decree's requirements have been satisfied. Here, effective as of the date that the new Consent Decree is entered in *United States et al. v. BP Products North America Inc. et al.*, (3:20-cv-190), the Toledo Refinery will have either completed all of its requirements under the 2001 Consent Decree or they will be transferred to the new Consent Decree. See Twelfth Amendment ¶ 1 (page 4). These actions satisfy the 2001 Consent Decree's standard for termination.

To the extent that the Twelfth Amendment transfers the Toledo Refinery's remaining obligations under the 2001 Consent Decree, this Court's finding that the original settlement met the deferential standard for approval still holds true and need not be revisited. See *id.* at 1049-50. To the extent that new compliance obligations are imposed to resolve newly alleged violations, the Northern District of Ohio will determine whether the new Consent Decree should be approved.

Accordingly, the Toledo Refinery should be terminated from the 2001 Consent Decree.

CONCLUSION

The United States respectfully requests that the Court grant this motion, approve the Eleventh Amendment by **signing page 4**, approve the Twelfth Amendment by **signing page 6**, and enter them as final judgments in this matter.

Dated: January 29, 2020

Respectfully submitted,

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